
From: Morris, James
To: Larry Silver
CC: Patterson, Leslie
Sent: 1/24/2017 11:07:10 PM
Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAOC for Removal Action and ASAOC for RI/FS -- Request for Additional Information

Hi Larry,

You have requested an explanation of how SRA International's costs in the most recent oversight billing under the RI/FS ASAOC fit into the ASAOC's definition of "future response costs."

In the RI/FS ASAOC signed in June 2016, "Future Response Costs" is defined, in pertinent part, as, "all costs, including, but not limited to, direct and indirect costs that the United States has incurred or will incur in connection with this Settlement Agreement during the time period from July 29, 2014, until the termination of this Settlement Agreement."

Prior to the signing of the RI/FS ASAOC in June 2016, EPA costs incurred "in connection with" the RI/FS ASAOC generally reflect costs bearing upon the negotiation of the new RI/FS ASAOC itself. Formal negotiations of the RI/FS ASAOC signed in June 2016 commenced with the issuance of the special notice letters, dated January 16, 2015.

Several months after formal negotiations commenced, in April 2015, Region 5 reached out to EPA's Office of General Counsel – ADR Law Office, who engaged SRA International to assist in the negotiation of the new RI/FS ASAOC by convening a mediation process whose stated goal was to allow all PRPs at the South Dayton Site to reach an internal agreement on an equitable allocation of site costs. This request for a mediation process was made in consultation with, and with the approval of, the PRP Group, who had contributed to previous RI/FS and removal activities under consent orders issued in 2006 and 2013, and had been involved in contribution litigation with a number of other PRPs for several years.

Whether SRA's mediation efforts, in retrospect, are considered successful, unsuccessful, or, ultimately, something in-between (I understand that the PRP Group has, since the formal conclusion of the mediation effort, successfully settled out with a number of previously uncooperative PRPs), the nature and timing of SRA's mediation efforts support the conclusions that these efforts—and the costs associated with these efforts—were a significant component of RI/FS negotiations and had a bearing on the final terms of the RI/FS ASAOC, including the named respondents to the ASAOC. Therefore, it is EPA's position that EPA's costs incurred in connection with SRA's mediation efforts—conducted between April and November 2015—are costs incurred "in connection with this Settlement Agreement," pursuant to the definition of "Future Response Costs" in the RI/FS ASAOC, finalized and signed in June 2016.

If you have any questions about this email, please feel free to contact me at 312.886.6632.

Thanks,

Jim

From: Larry Silver [mailto:lsilver@lssh-law.com]

Sent: Wednesday, January 18, 2017 1:41 PM

To: Morris, James

Cc: Patterson, Leslie


Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAOC for Removal Action and ASAOC for RI/FS -- Request for Additional Information

Hi Jim,

My Group has asked whether the attached invoice from SRA International fits within the definition of Future Response

Costs under the Orders. Can you clarify for us?

Larry
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From: Morris, James [<mailto:Morris.James@epa.gov>]

Sent: Friday, January 06, 2017 5:21 PM

To: Larry Silver <lsilver@lssh-law.com>

Cc: Patterson, Leslie <patterson.leslie@epa.gov>

Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAO for Removal Action and ASAO for RI/FS -- Request for Additional Information

Hi Larry,

In response to your email to me of 12.12.2016, please see below for the additional information you requested in connection with the most recent EPA oversight billings at the South Dayton Dump Site.

1. Tetra Tech Charges in the VI Removal Action Invoice -- EPA used its best professional judgment, knowledge of its level of involvement with OU3 and OU4, and the description of work performed in the Tetra Tech monthly reports to apportion the Tetra Tech costs between OU3 and OU4. For example, using Leslie Patterson's own payroll costs as a guide, from the time period beginning upon Ms. Patterson's return from maternity leave (mid-January 2016) until September 2016, 94% of her removal oversight time was spent on OU3, while only 6% was attributable to OU4. Although this time frame does not correspond exactly to the timeframe covered in the ICS, it is an indication that the vast majority of Tetra Tech's removal oversight work can be attributed to OU3. The percentage of the Tetra Tech vouchers attributed to OU3 is between 50% and 85%, because the vouchers describe enough OU4 activities to justify attributing more than 6% to OU4. Those reports that identify more OU3-related activities were attributed a higher percentage to OU3 (i.e. closer to 85%).

2. Annual Allocation Charges of Toeroek Associates in the RI/FS Invoice -- Generally, annual allocation costs are non-site-specific contractor costs that either benefit or relate to more than one Superfund site. They are **not** contractor overhead costs. Some examples of annual allocation costs include: training employees how to handle certain hazardous materials, safety training, and the development of CERCLA site standard operating procedures. These contractor activities are essential to Superfund cleanup site work, but the activities may be used at several sites. On an annual basis, government contractors allocate these costs across the sites that they have worked on during the past year. The contractor provides EPA with a site specific allocation of the cost, and EPA treats them as direct costs. The few courts that have expressly considered annual allocation costs have held that they are properly allocated and recoverable. See *United States v. Findett*, 220 F.3d 842 (8th Cir. 2000) and *United States v. The Atchison, Topeka & Santa Fe Railway Co.*, No. CV-F-92-068 (E.D. Cal. May 24, 2002).

3. SRA International Charges in the RI/FS Invoice -- These charges stemmed from a Headquarters contract, and the Region is not in possession of detailed backup documentation; however, a Headquarters contact has generated a

summary of work done by SRA and the amounts invoiced. Please see the attached document.

I hope this information is responsive to your concerns. Please feel free to contact me if you have any questions.

Thanks,

Jim

From: Larry Silver [<mailto:lsilver@lssh-law.com>]

Sent: Monday, December 12, 2016 8:57 AM

To: Morris, James <Morris.James@epa.gov>

Cc: Patterson, Leslie <patterson.leslie@epa.gov>

Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAO for Removal Action and ASAO for RI/FS -- Request for Extension of Payment Deadline

Jim and Leslie,

Here are the additional questions my Technical Committee has about the two cost invoices. Thanks for considering:

We have reviewed the supporting documentation provided by EPA and have the following comments.

VI Oversight Invoice

Tetra Tech charges - The supporting documentation shows that Tetra Tech charges cover work conducted by both the SDD Group and Valley Asphalt. There is no explanation regarding how charges billed to the SDD Group were segregated from costs associated with activities conducted by Valley Asphalt. Please explain how the charges were allocated.

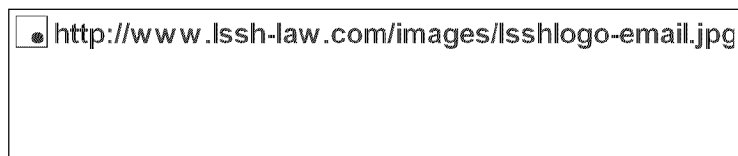
RI/FS Oversight Invoice

Toeroek Associates charges - The supporting documentation matches the "Site Amount" on the Oversight Invoice. However, the Oversight Invoice also includes an "Annual Allocation" amount, which is a percentage of the "Site Amount". No explanation of what work the "Annual Allocation" covers, or how the percentage allocation was calculated, was provided. Please explain what work the "Annual Allocation" covers and how the percentages are determined.

SRA International charges - We did not find any supporting documentation for the charges. Please provide the supporting documentation.

Regards,

Larry
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From: Morris, James [<mailto:Morris.James@epa.gov>]

Sent: Friday, December 09, 2016 4:06 PM

To: Larry Silver

Cc: Patterson, Leslie

Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAOC for Removal Action and ASAOC for RI/FS -- Request for Extension of Payment Deadline

Larry,

Before Leslie provided your requested back-up cost information to me, I had requested from our financial people an extension of the due date for payment of the oversight bills. That request was granted, and so the new due date for the bills is January 23, 2017.

Thanks,

Jim

From: Morris, James

Sent: Tuesday, December 06, 2016 3:44 PM

To: 'Larry Silver' <lsilver@lssh-law.com>

Cc: Patterson, Leslie <patterson.leslie@epa.gov>; Renninger, Steven <renninger.steven@epa.gov>

Subject: RE: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAOC for Removal Action and ASAOC for RI/FS -- Request for Extension of Payment Deadline

Hi Larry,

Attached please find the back-up information you requested in connection with the EPA oversight billings for the Removal Action AOC (OU3) and the RI/FS AOC (OU1 and OU2).

- Removal Action Oversight Invoice - Tetra Tech charges totaling \$16,818.88

The attached monthly reports and vouchers (wage rates and labor hours have been redacted) contain both OU3 and OU4 costs. The progress reports might reference "OU3" while also including reference to OU4 work; the TDD summary and labor hour reports might reference "OU4" when, again, both OU3 and OU4 work is included. EPA used its best professional judgment and knowledge of our level of involvement with OU3 and OU4 to apportion the costs between OU3 and OU4.

- RI/FS Oversight Invoice – Toeroek Associates, Inc. charges of \$10,951.84 and \$34,480

All the Toeroek vouchers (wage rates and labor hours have been redacted) are attached. Toeroek's vouchers reflect work supporting EPA's PRP search and RI/FS negotiation activities.

RI/FS Oversight Invoice -- SRA International, Inc. charges totaling \$42,648.70

It is my understanding that EPA's contract with SRA International originated in EPA Headquarters, and so Region 5 is not in possession of vouchers connected with this contract. However, I can provide a summary of SRA's activities: SRA International provided facilitation/mediation services in support of the organization and internal negotiations among PRPs involved in the site. Neutral activities included consultation with PRP group members concerning settlement and allocation processes, coordination of outreach to site PRPs, mediation of deliberations on group confidentiality and cost-sharing agreements, and facilitation of group meetings and teleconferences.

As I mentioned during our phone conversation earlier today, Leslie and I went through the draft RI/FS Oversight Invoice and identified and excluded all payroll and contractor costs that were not incurred "in connection with" the RI/FS settlement agreement that became effective June 13, 2016. This process resulted in a substantial decrease of the total amount of the RI/FS Oversight Invoice, from \$405,878 to \$270,476.

Please give me a call if you have any questions about the attached. Given Leslie's quick turnaround time in generating the requested back-up information, are you still requesting an extension of the payment deadline for both invoices?

Thanks,

Jim

From: Larry Silver [<mailto:lsilver@lssh-law.com>]

Sent: Monday, December 05, 2016 2:51 PM

To: Morris, James <Morris.James@epa.gov>

Cc: Patterson, Leslie <patterson.leslie@epa.gov>; Renninger, Steven <renninger.steven@epa.gov>

Subject: South Dayton Dump Superfund Site -- Oversight Cost Billing Under ASAO for Removal Action and ASAO for RI/FS -- Request for Extension of Payment Deadline

Jim,

On behalf of the Respondents (NCR Corporation, Kelsey Hayes Company and Hobart Corporation), I recently received the attached oversight bills for the 2013 ASAO for Removal Action and the 2016 ASAO for RI/FS for OU1 and OU2. By our calculation, the current due date for these bills is December 22, 2016.

We have reviewed the bills. In order for the Respondents to complete our review, we kindly request additional information which will assist us in determining services that were performed by the following contractors:

- Removal Action Oversight invoice - Tetra Tech charges totaling \$16,818.88
- RI/FS Oversight Invoice – Toeroek Associates, Inc. charges of \$10,951.84 and \$34,480; SRA International, Inc. charges totaling \$42,678.70

Please provide supporting documentation for the work performed by Tetra Tech, Toeroek and SRA International.

In addition, the Respondents kindly request an extension to the payment deadline for the bills for both Orders commensurate with the time required for EPA to provide the documentation requested in this e-mail.

Regards,

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